



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

Distr.
GENERAL

CERD/C/299/Add.11
28 February 1997

ENGLISH
Original: SPANISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Fourteenth periodic reports of States parties due in 1996

Addendum

ARGENTINA*



[23 January 1997]

* This document contains the eleventh, twelfth, thirteenth and fourteenth periodic reports due on 4 January 1990, 1992, 1994 and 1996. For the tenth periodic report of Argentina and the summary records of the meetings of the Committee at which the report was considered, see documents CERD/C/172/Add.18 and CERD/C/SR.892 and 894.

The information submitted by Argentina in accordance with the guidelines laid down for the initial part of the reports of States parties is contained in the core document HRI/CORE/1/Add.74.

Information concerning articles 2 to 7 of the Convention

Article 2

1. The obligation undertaken by the Argentine Republic under this article to pursue a policy of eliminating racial discrimination in all its forms and promoting understanding among all races flows from the basic texts of the Republic and from national legislation.

2. The Argentine Republic's legal system is made up of laws which have different levels of precedence and cover different areas, all of which are in keeping with the guidelines set out in the Constitution of 1853/1860, with the amendments in force since 24 August 1994. As shown by articles 31, 27 and 75, paragraph 22, of the Constitution, the order of precedence is as follows:

- (a) national Constitution;
- (b) international human rights instruments of equal standing with the Constitution;
- (c) other international treaties;
- (d) domestic law;
- (e) provincial law, including the provincial constitutions.

3. This order of precedence substantially modifies the order in force up to 24 August 1994, as from, when, under article 75, paragraph 22, of the Constitution, a set of international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, were ranked equally with the Constitution.

4. With specific reference to questions of discrimination, it may be noted that all human rights protected by the legal system in force in the Argentine Republic are intended to be exercised and enjoyed by all its "inhabitants". As the Supreme Court of Justice has made clear, the term "inhabitant" includes both nationals and foreigners and refers to persons who reside in the national territory with the intention of remaining there or who live there without having a domicile with full legal effects (Judgements 151:211).

5. Article 16 of the Constitution of 1853/1860, amended in 1994, provides that the Argentine Nation does not admit prerogatives of blood or birth; there are no personal privileges or titles of nobility. All its inhabitants are equal before the law and are admissible for employment without any requisite other than their suitability. Taxation and the public burden are based on equality; although the terminology is that of a hundred years ago, it substantially corresponds to the terms of article 24 of the American Convention on Human Rights and article 26 of the International Covenant on Civil and Political Rights, as well as the corresponding provisions of the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man, all of which also have constitutional status.

6. Any instance of discrimination is thus a flagrant breach of the Constitution, the international human rights treaties with constitutional status and the additional legislation.

7. The law of the Argentine Republic enshrines in the Constitution the equality of the civil rights of nationals and foreigners. Article 20 of the Constitution thus states that in the territory of the Republic foreigners enjoy all the civil rights of a citizen; they may engage in their industry, trade or profession; they may own real estate, purchase it and dispose of it; they may navigate on the rivers and along the coasts; they may freely practise their form of worship; they may make wills and marry in accordance with the law. They are not obliged to take citizenship or to pay obligatory supplementary taxes. (...)

8. According to the interpretation of these laws by the Supreme Court of Justice, the guarantee of equality before the law resides in ensuring equal legal treatment to persons in reasonably equal circumstances; this guarantee does not prevent the lawmaker from taking different approaches to situations that differ in his opinion, in that such distinctions are not expressed on the basis of arbitrary criteria, inappropriate favour or disfavour, personal privilege or inferiority, class, or unlawful persecution.

9. As part of this legal context, Act No. 24.382, adopted on 5 October and promulgated on 26 October 1994, instituted 17 March of each year as International Day for the Elimination of Discrimination. The decision to commemorate non-discrimination annually falls within the context of the task of elimination referred to in paragraph 15 of the Vienna Declaration and Programme of Action and within the context of the United Nations Decade for Human Rights Education, adopted by the United Nations General Assembly in resolution 48/127.

10. In the same context and in support of the campaign against discrimination, on 5 July 1995, Congress adopted Act No. 24.251, which was promulgated on 28 July of the same year and established the National Institute to Combat Discrimination, Xenophobia and Racism (INADI), as a decentralized body within the Ministry of the Interior. Its purpose is to develop national policies and practical measures to combat discrimination, xenophobia and racism and encourage and carry out initiatives to that end.

11. It should be noted that under Decree No. 232/92 any reservation for reasons of State which may have applied to documents concerning Nazi criminals was declared null and void, and national organizations possessing such documents were ordered to make them available to the General Archives of the Nation within 30 days.

12. An important fact in this connection is that the Argentine Republic has on two occasions since 1991, agreed to the extradition of criminals accused of committing crimes against humanity during the Second World War, with the extradition of Josef Franz Leo Schwamberger to the Federal Republic of Germany in 1991 and of Erich Priebke to the Republic of Italy in 1994.

13. Important progress was made in the context of the 1994 reform of the Constitution, and with reference to the matter under discussion:

(a) Recognition of the indigenous communities as legal entities (art. 75, para. 17);

(b) Constitutional status for the existing remedy of amparo, with the additional provision that it will be applicable to any form of discrimination (art. 43);

(c) Principle whereby the education organization and basic education acts must respect provincial characteristics and equality of opportunity without discrimination, and protect cultural identities and diversity (art. 75, para. 19);

(d) Mandate of the legislature to pass and promote measures for positive action guaranteeing equality of opportunity and treatment and the full enjoyment and exercise of the rights recognized by the Constitution and by international human rights treaties in force, particularly with reference to children, women, the aged and the handicapped (art. 75, para. 23).

Indigenous populations

14. The reform of the Constitution became an event of particular relevance for indigenous populations. These sectors participated to a considerable extent in drafting Act No. 24.309 which proclaimed the need for reform. This proved indispensable in the process of making the indigenous question "visible" and changing the existing situation.

15. In the Declaration which the indigenous populations submitted in October 1993, they asserted that they were the representatives of the Kolla, Tapiete, Wichi, Pilagá, Toba, Mocoví, Mapuche, Chané and Chiriguano peoples, desirous of claiming, as early peoples who had always inhabited Argentina, along with their rights, the recognition of Argentina as a multiethnic and multicultural country.

16. The result of this first move was a statement in the Need for Reform Act (art. 3, para. LL) to the effect that the amendment of the Constitution was necessary in order to guarantee the ethnic and cultural identity of the indigenous peoples. This led to the amendment of the 1853 text, according to which Congress had the power "To provide for the security of the frontiers; to maintain peaceful relations with the Indians, and to promote their conversion to Catholicism".

17. The task of the National Constituent Convention was set out in the text of the present article 75, paragraph 17:

"Congress shall: ...

Recognize the ethnic and cultural prior existence of the indigenous peoples of Argentina;

Guarantee respect for identity and the right to a bilingual and cross-cultural education; recognize the legal personality of the communities and the possession and common ownership of the lands traditionally occupied by them; make arrangements for giving them more land suitable and sufficient for human development; none of this land shall be alienable, transferable or subject to lien or distraint;

Ensure their participation in the management of their natural resources and other matters concerning them. The provinces shall be entitled to exercise these powers concurrently."

18. It may be noted that, in addition to the list of the main indigenous rights, the existence of the indigenous peoples prior to the formation of the Argentine State and its provinces has been expressly recognized; this is an important argument in the campaign of the indigenous peoples for legal personality.

19. This reform of the Constitution provides a new framework for Act No. 23,302, on Indigenous Policy and Assistance to Indigenous Communities and the relevant provincial legislation. The following may be recalled here: the Comprehensive Indigenous Act No. 426 of Formosa Province, of October 1984, which provides for the establishment of the Indigenous Communities' Institute; Act No. 6373 of Salta Province, 1986, on Indigenous Promotion and Development; Act No. 3258 of 1987 on the Improvement of the Living Conditions of the Indigenous Communities and the establishment of the Chaco Indigenous Institute; and the provincial acts of Misiones, Río Negro, Chubut and Santa Fe Provinces.

20. Estimate of indigenous populations in the Argentine Republic, according to data obtained by the National Institute of Indigenous Affairs (INAI) from various sources, are as follows:

PROVINCES	ETHNIC GROUP	POPULATION
Formosa	Pilagá	5 000
Santa Fe and Chaco	Mocoví - Toba	7 300
Chaco, Salta and Formosa	Wichi	60 000
Salta	Chorote	835
Salta	Chulupi	1 165
Misiones	Guaraní	2 900
Salta and Jujuy	Chiriguano	21 000
Salta	Tapiete	500
Salta	Chané	1 400
Neuquén, Río Negro, La Pampa, Chubut, Buenos Aires	Mapuche	40 000
Chubut, Santa Cruz and Tierra del Fuego	Tehuelche	1 000
Tucumán, Santiago del Estero and La Rioja	Diaguitas, Calchaquies, Quilmes	6 000
Jujuy, Salta	Kolla	170 000
Tierra del Fuego	Ona	500
ESTIMATED TOTAL		376 500

21. INAI's educational activities are basically directed at promoting bilingual and cross-cultural education and scholarships for indigenous students in the formal education system, including further education, restoring traditions and customs along with medical and herbal knowledge - in short, the history of the indigenous communities. In this context, services are provided in the form of financial support - reimbursable or not depending on the situation of each community - for implementing projects to improve the quality of life of the communities by means of micro-enterprises, community and housing improvements, infrastructure, communications and community facilities, market gardens and family farms and rural enterprises.

22. Where the ambient culture is concerned, action is directed at spreading knowledge of the situation of the indigenous populations in Argentina, especially at the secondary education level.

23. As regards training, as from 1995, workshops have been held for indigenous community leaders in coordination with the National Programme for Community Leaders, to give the indigenous population the means to formulate their own projects and be directly involved in their conception, presentation and follow-up. Training courses for 120 fellowship students from nine provinces have been held in the north-west, north-east and Patagonia.

24. INAI is for its part involved in the following activities: ethno-linguistic surveys, recording of memories, formal and informal education and educational assistance. For example, INAI supports Wichi families in the municipality of El Sauzalito which, in addition to its main centre of El Sauzalito, includes a number of localities which are part of the Chaco sector of the geographical region known as El Impenetrable, an area of approximately 5,240 km² with a stable population of 800 families.

25. The following projects have been carried out in this area:

(a) "Comprehensive rural development programme of the area between the Teuco and Bermejito Rivers".

First stage: 73 projects concerning agriculture, water supply, bee-keeping, spinning, goat-breeding, dressmaking, food production and brickworks; the programme also includes 20 training courses to support these undertakings. There are 312 families which benefit;

(b) "El Sauzalito Wichi Cultural Development:" this project is intended to save and revitalize the cultural potential of the Wichi families by reinforcing their identity and self-esteem as a basis for other activities to improve the quality of life of this group. One hundred and fifty indigenous families are involved;

(c) "Land measurement," for the purpose of obtaining community ownership of a total area of 18,814 hectares occupied by the Wichi as a reservation, as designated by the Chaco provincial government. The beneficiaries are 296 indigenous families;

(d) "Graphic arts course:" this is offered in the context of the graphic arts workshop which directly benefits three Wichi families, but will also allow new reading material to be published in the indigenous language;

(e) "Application for a subsidy for the Taiñi Cultural Association": this Association is based in El Sauzalito and is run by the Wichi. The requested financial assistance is intended to cover expenses linked to cultural promotion activities which the Association carries out in the Wichi indigenous community;

(f) "Preparation of teaching materials for Wichi language literacy courses": it is planned to publish 3,000 copies of a book called Chalanero in Spanish and Tsalanawu in Wichi in order to teach local Wichi children to read. It includes a common alphabet for the two languages since the indigenous language is oral. Although the project is located in El Sauzalito, its social impact will reach all the Wichi population in the area concerned;

(g) Community Agriculture Programme: in November 1994, an indigenous subprogramme of this Ministry of Agriculture and Fisheries project was set up in Formosa Province; it operates through a provincial technical coordination unit, comprising the Ministry, the Institute of Indigenous Communities and work teams comprising members of the indigenous community and NGOs; channels of indigenous participation have been defined in area terms for the Wichi and the Toba and in ethnic terms for the Pilagá;

(h) Indigenous Peoples' Health Programme (Ministry of Health and Social Welfare): in view of the serious situation caused by outbreaks of cholera in northern Argentina, a programme was set up to improve primary health care in indigenous communities by reviving their culture in the cholera stricken areas; it involves the provision of equipment and the training of 250 indigenous health workers in five provinces.

On the basis of the above, the Indigenous Peoples' Health Programme was established in 1995, with a coverage of 40,000 persons. The programme has 250 indigenous health workers recruited under agreements with the Ministry of Labour and a national interdisciplinary team with indigenous representatives and coordinates with the programmes of the Mother and Child Health Directorate.

26. The National Institute of Indigenous Affairs, with assistance from the land authorities and the National Register of Indigenous Communities, is working for the transfer of estate land to the indigenous communities which have traditionally occupied it, and provide them with the necessary know-how to make the best use of it. For example, INAI, in cooperation with the provincial governments, is in the process of regularizing the ownership of land traditionally occupied by the indigenous communities, and providing the latter with technical and financial support. At present, two estates in Salta Province, with a total area of 145,000 hectares, are being expropriated, and regularization is taking place in the provinces of Formosa, Salta, Chaco, Chubut, Neuquén, Misiones and Tierra del Fuego.

27. A good example of what has been achieved to date is the recent distribution of land ownership deeds in Formosa province to all the indigenous

communities living on that land, which is estimated at more than 400,000 hectares. Similar measures are being taken in other provinces.

28. For further information on the activities of the Institute for Indigenous Affairs, see annex 1.*

Immigrants

29. In addition to the measures mentioned earlier, the Argentine Republic has adopted others to encourage foreigners to settle in the country and make it easier for them to do so. Decree No. 1033/92 established emergency arrangements - thus subject to time restrictions - so as to legalize the situation of nationals of neighbouring countries, established de facto - although not legally - in the Argentine Republic on 30 December 1991. These foreign citizens were able to become fully established, with all the accompanying advantages.

30. The emergency legislation mentioned above has permitted approximately 250,000 persons to legalize their situation, including Bolivians, Brazilians, Chileans, Paraguayans and Uruguayans.

31. At present, the immigration law in force is to be found in Decree No. 1023/94 and its 12 statutory provisions. The emergency regime has therefore become null and void, and guidelines have now been established for granting permanent or temporary residence in the Argentine Republic.

32. With specific reference to the estimated 500,000 Bolivian nationals living illegally in the Argentine Republic, the Presidents of Argentina and Bolivia agreed on a 120-day deadline as from 19 November 1996 for the completion of negotiations on the subject. The purpose of the negotiations is to arrive at an agreement on migration between the two countries on the basis of principles of shared responsibility, job-creation norms, integration of frontier areas and incorporation of immigrants in each country through labour, social and cultural integration plans. The aim of this agreement will be to simplify existing red-tape, integrate these citizens into the registered labour market and facilitate their access to basic services without discrimination.

Refugees

33. The largest group of refugees in the Argentine Republic was of Lao nationals who settled between 1979 and 1980 under the relevant UNHCR programme. A large number of families in this group have applied for voluntary repatriation since they have been unable to adjust to local customs and to being so far from their homeland. Lack of financial resources has made it impossible to comply with their wishes.

34. With the return of democracy in 1983, Argentina fully honoured its international commitments with regard to refugees. It lifted the time-related and geographical restrictions of the convention and, under Decree No. 464 of

* Can be consulted in the archives of the Centre for Human Rights.

1985, established the Refugee Eligibility Committee (CEPARE) within the Ministry of the Interior (National Directorate of Migrations), a government body responsible for processing applications submitted by foreign asylum-seekers. UNHCR is a member of the Committee.

35. The consolidation of UNHCR's objectives in the Argentine Republic strengthens democracy and the rule of law, the two pillars of any continued efforts to establish an environment of humanity and solidarity in this turbulent end to the millenium.

Article 3

36. Apartheid is not practised in the Argentine Republic. The Government openly condemns all forms of apartheid or any other form of racial segregation and will not tolerate it in any of its manifestations. Since 6 December 1985, the International Convention on the Suppression and Punishment of the Crime of Apartheid has been in force and has contributed with the efforts of the international community as a whole, to achieving the total eradication of apartheid in all its States parties.

Article 4

37. The opinions of extremist or racist organizations are repellent to the Government of the Argentine Republic. While the activities of such groups or their members are in breach of the law on the grounds of their ideologies, there are specific laws dealing with criminal behaviour. In particular, Act No. 23,592 of 21 August 1988 increases the penalties set out in the Penal Code "when the offence committed concerns the persecution or hatred of a race, religion or nationality, or is intended to destroy wholly or in part a national, ethnic, racial or religious group".

38. Two recent cases have illustrated the validity and the application of all the anti-discrimination legislation mentioned, namely, Ekmekdjian v. Sofovich (1992) and DAIA v. Bonavota (1996), with particular reference to the question of procedural right to act as complainant, which was accepted in both judicial decisions, although the injured party was a member of a religious community and not the direct target of the offence, which was the community as a whole.

39. Where the principle of equality is concerned, in the second of the judgements cited, the National Judge of First Instance for Federal Criminal and Correctional Cases, Dr. Gabriel Cavallo, said, "The constitutional guarantee of equality, expressed as equality before the law, implies a statement that our nation admits no prerogatives or differentiation in respect of any person or group of persons. In positive terms, it means that laws which admit of a state of affairs incompatible with that principle will not be acceptable, and in negative terms it means that acts which, although not sanctioned by any legislation in fact imply that state of affairs, must not be tolerated."

40. The federal judge, Claudio Bonadio, after receiving a complaint, in early December 1996, tried former General Carlos Guillermo Suarez Mason who was charged with the offence of "incitement to racial or religious hatred"

following statements made to and published by the local press against the Jewish community. The judge based his decision on the violation of article 3 of the anti-discrimination act mentioned above (23,592) and recalled that although the Constitution defends the freedom to express ideas, it should not be taken as a licence to "protect" offences and infringe the rights of third persons.

Article 5

41. None of the rights set out in article 5 of the Convention are subject to any restrictions on grounds of race, colour or ethnic or national origin, except for the right to vote, which, as in other countries, is subject to certain restrictions based on nationality.

42. The policy of the Argentine Government is to promote the full and equal enjoyment of human rights and fundamental freedoms by all the country's inhabitants. It may be noted that, following the reform of the Constitution in 1994, membership of the Apostolic Roman Catholic faith is no longer a requirement for becoming President of the Republic, as it was in the 1853/1860 Constitution, while the members of religious communities of some consequence in the country are entitled to (or will be soon) paid religious holidays, as is the case for members of the Jewish community under Act No. 24,571; for members of the Muslim community, a bill currently before Congress has been provisionally approved pending final passage.

43. Non-discrimination is a principle which pervades human rights law. The very notion of human rights comprises notions of equality, with non-discrimination as the corollary. As has been said, this obligation is enshrined in the legislation in force in the Argentine Republic.

44. From what has been said about article 2 of the Convention, together with the foregoing, it can be seen that in the Argentine Republic no distinction is made on grounds of race as far as the enjoyment and exercise of the rights set out in article 5 is concerned. The reports that the Argentine Republic has submitted to the Human Rights Committee corroborate this (CCPR/C/45/Add.2).

Article 6

Remedy of amparo

45. In addition to the remedies referred to in Part I, with reference to the substance of this report, it may be noted that the Constitution in force since 24 August 1994 introduced the practice of filing for amparo against any form of discrimination.

Act No. 23,592 concerning discriminatory acts

46. This Act remains in force and provides for civil proceedings to be brought, at the request of the interested party, against any person who arbitrarily harms, restricts or in any way impairs the full exercise, on an equal footing, of fundamental rights and guarantees, in particular, discriminatory acts or omissions motivated, inter alia, by considerations of race, religion, nationality, ideology, political or trade union opinion, sex,

financial situation, social status or physical characteristics. In such cases, the perpetrator of the act shall be required to cancel the discriminatory act or cease to perform it and to repair the moral and material damage caused. Case law demonstrates the validity and full implementation of the above Act.

Complaints to the National Technical and Prevention Directorate of the Office of the Under-Secretary for Human and Social Rights of the Ministry of the Interior

47. The Directorate receives approximately 50 complaints and requests for advice every month. The requests are forwarded to the various areas of Government, depending on the subject matter. Complaints concerning the commission of an unlawful act are submitted to the judicial authorities. If the complaint involves a public official, it is also submitted to the relevant administrative body so that an administrative inquiry can be carried out.

Complaints to the National Institute to Combat Discrimination, Xenophobia and Racism

48. On 27 June 1994, the Ministry of the Interior issued a resolution entrusting the Office of the Secretary for the Interior and the Office of the Under-Secretary for Community Relations with drafting a bill for the establishment of this Institute (see annex III).

49. The Act establishing the Institute gives it powers to receive, collate and investigate complaints of discriminatory, xenophobic or racist behaviour, and provide advisory services for victims and free legal support.

50. In view of the short time since its establishment and the start of its activities, it is impossible for the time being to report on the results obtained so far.

Complaints to the National Anti-Discrimination Programme, Office of the Secretary for Community Relations, Ministry of the Interior

51. This body is not empowered to take official action, which means that it is essential that the presumed injured party should submit a formal complaint.

Article 7

Teaching and education

52. Act No. 23,302, which refers specifically to education in the indigenous communities, states in article 14 that school syllabuses must preserve and revitalize the historical and cultural identity of those communities and ensure that their members are integrated into national society on a basis of equality.

National Institute to Combat Discrimination, Xenophobia and Racism

53. This Institute, established in 1995 as already explained, has the following functions:

- (a) Prevention/dissemination: disseminating the principles and legal standards relating to non-discrimination and informing public opinion;
- (b) Education: planning and promoting education campaigns;
- (c) Investigation;
- (d) Services;
- (e) Documentation;
- (f) Cooperation.

National Anti-Discrimination Programme

54. The Minister of the Interior approved the National Anti-Discrimination Programme (1993) in resolution No. 142; its raison d'être is to draw attention to the problem of discrimination in order to develop public understanding of the situation of those who experience it and help to transform the discriminatory aspects of our society. Its aim is to support fixed-term programmes through the non-governmental organizations dealing with discrimination; it is also concerned with popular education and with urgent measures intended to provide an immediate response to an act of discrimination and to the particular circumstances of the persons who are the object of the discrimination (see annex II). In this connection, an interdisciplinary seminar on "Approaches to discrimination" was held in Buenos Aires on 3 and 4 March 1994.

Office of the Under-Secretary for Human and Social Rights (Ministry of the Interior)

55. The programme objectives of the National Promotion Directorate of the Office of the Under-Secretary are:

- (a) To help to incorporate education for human rights and democracy in all levels of formal education as the basis for a citizens' ethic, guarantee human rights and prevent violations;
- (b) To conduct joint informal human rights education programmes with governmental, non-governmental and international agencies;
- (c) To train public officials (national and provincial) in the theoretical and practical aspects of human rights, since it is they who are responsible for the implementation of public policies;
- (d) To train the police and security forces to work within the rules and principles laid down by the legislation in force and in accordance with the recommendations of the United Nations;

(e) To give impetus to the specialized human rights documentation centre administered by the Directorate;

(f) To promote publications which support the dissemination, theoretical consideration and teaching of human rights.

Curriculum of the Institutes for Training and Improvement of the Federal Prison Service

56. Study programmes in this sphere were updated in accordance with resolution No. 1145/91 of the Ministry of Justice. The discussion workshop programme on the duties of warders, guards and workshop supervisors, for non-commissioned officers of the Federal Prison Service, includes the Universal Declaration of Human Rights and the Code of Conduct for Law Enforcement Officials. The study programme for officers includes a course on "Applied ethics and human rights", the core content of which includes the concept of human rights; categories, conventions, treaties, covenants and declarations; and legal instruments in force (Pact of San José, Costa Rica; Standard Minimum Rules for the Treatment of Prisoners, etc.).
